



Minneapolis

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TO: Council Member Robert Lilligren

FROM: Nikki M. Newman, Assistant City Attorney

DATE: August 13, 2008

RE: NRP Policy Board

MEMORANDUM

Peter Ginder asked me to respond to your July 30 email containing the following questions about the Minneapolis Neighborhood Revitalization Program Policy Board:

1. How and when does the current NRP Joint Powers Agreement terminate? Does this include the sunset of the current NRP Policy Board?
2. Based upon the fact that there are Phase 1 and Phase 2 NRP contracts and activities (including revolving loan funds) that will continue beyond the 20-year timeframe of the program, who has decision-making and governing authority around these funds going forward? Is it required that some incarnation of the Policy Board would need to be constituted to continue to govern these funds? Could this ongoing management/governance be delegated to the proposed Community Advisory Board?

BACKGROUND.

The NRP Law. Minnesota Statutes, Section 469.1831 (the “NRP Law”) authorizes cities of the first class to establish a neighborhood revitalization program. Minn. Stat. §469.1831, subd. 2 (2006). The NRP Law is prescriptive about certain elements of the program. It says “[t]he neighborhood revitalization program must be developed with the [action plan] process outlined in this subdivision.” Minn. Stat. §469.1831, subd. 6(a) (2006). It further provides that “[e]ach city that develops a program must establish a policy board.” Minn. Stat. §469.1831, subd. 6(c) (2006). It also dictates the membership of the policy board: “whose membership includes members of the city council, county board, school board and citywide library and park board where they exist appointed by the respective governing bodies; the mayor or designee of the mayor; and a representative from the city’s house of representatives delegation and a representative from the city’s state senate delegation appointed by the respective delegation.” *Id.*

However, the governing body of each governmental unit entitled to policy board membership has discretion whether to accept membership. Section 469.1831, subd. 6(e), says that “...each of the

governmental units and groups named in paragraph (c) may, by resolution or agreement of its governing body, become a member of the policy board." Community and neighborhood representation also is optional. Section 469.1831, subd. 6(c) says the policy board "may also include representatives of citywide community organizations, neighborhood organizations, business owners, labor, and neighborhood residents."

The NRP Law requires the policy board to perform program planning and oversight functions. Section 469.1831, subd. 6(d) says the policy board "shall review, modify where appropriate, and approve, in whole or in part, the neighborhood action plans and forward its recommendations for final action to the governing bodies represented on the policy board." Section 469.1831, subd. 7 requires that: "[the] policy board must periodically review the activities funded with program money to determine if the expenditure of the program money is in compliance with the neighborhood revitalization program."

The NRP Ordinance. Pursuant to authority granted in the NRP Law, the city council adopted an ordinance on June 15, 1990 creating a neighborhood revitalization program. The ordinance, as amended, is codified at chapter 419, Minneapolis Code of Ordinances. Section 419.60 says:

...the city council, by resolution, shall establish the policy board consisting of membership from the city council, the Hennepin County Board, the board of Special School District No. 1, the library board, the Parks and Recreation board, the mayor or the mayor's designee, a representative from the Minnesota House of Representatives delegation from Minneapolis, and a representative from the Minnesota Senate delegation from Minneapolis. The elected officials on the policy board may appoint to the policy board such additional representatives from Minneapolis labor, business, neighborhood, community, city-wide and social service organizations as they deem appropriate.

The city council presumably adopted one or more such resolutions, but I have not yet obtained copies of same.

The 1991 Amendment. As originally enacted in 1990, the NRP Law contemplated only an advisory policy board without any operational powers. A 1991 amendment added authorization to make the policy board a joint powers entity and specifically enumerated additional powers that could be given to the policy board. The amendment provided as follows:

Upon resolution or agreement of two or more governmental bodies or governmental boards, the policy board shall be a joint powers board under section 471.59, except that no power may be exercised under section 471.59, subdivision 11. The policy board may (1) sue and be sued...; (2) hire, retain, discipline and terminate a director...; (3) enter into contracts...; (4) adopt bylaws for its own governance; (5) enter into agreements with governmental units...; (6) accept gifts...; (7) review activities to determine whether the expenditure of program money and other money is in compliance with the neighborhoods plans...; and (8) prepare annually an administrative budget....

The Joint Powers Agreement and Bylaws. Pursuant to authority in the 1991 amendment to the NRP Law, the City, Hennepin County, Independent School District No. 1, the Library Board of the City of Minneapolis and the Park and Recreation Board of the City of Minneapolis entered into a Joint Powers Agreement Neighborhood Revitalization Program (the "Joint Powers Agreement") effective January 1, 1992. A recital in the Joint Powers Agreement indicates that "representatives of the governmental units have met since March 7, 1990 for the purpose of forming and participating on a policy board, and their respective governing bodies have taken appropriate actions to affirm their commitment to such participation." The city council approved the Joint Powers Agreement on December 6, 1991.

The Joint Powers Agreement establishes a joint powers policy board (the "Policy Board"), specifies the composition, voting rights and terms of its members, provides for officers and meetings to be specified in bylaws, contemplates an implementation committee and a director to assist in accomplishing the purposes of the program, and addresses indemnification and audits.

By its terms, the Joint Powers Agreement runs to January 1, 2012. It may be terminated earlier "by the concurrent agreement of four of the five participating jurisdictions." The merger of the Library Board with Hennepin County complicates this calculation. Further, any participating jurisdiction may unilaterally withdraw from the agreement. To do so, the jurisdiction must give notice by June 1 of the withdrawal year that it has adopted a resolution indicating an intention to withdraw on December 31 of the year. Finally, the parties may amend the agreement "by unanimous written consent."

On February 8, 1993, the Policy Board adopted bylaws (the "Bylaws"). The Bylaws address the same topics as the Joint Powers Agreement, but in greater detail. However, the Bylaws state that neighborhood representatives shall be elected annually by Minneapolis residents rather than appointed by the public officials on the Policy Board as stated in the Joint Powers Agreement, the NRP Ordinance and the NRP Law.

Prior Opinions. In a memorandum dated February 10, 1992, the City Attorney's Office outlined the status, powers and duties of the Policy Board. It opined that the Policy Board "is not a governmental or political subdivision. Nor is it a single entity with autonomous, corporate powers. It is created consensually, by contract...[and] shall be representative of the parties to the board...." In a memorandum dated October 22, 2003, the City Attorney's Office further opined that the Policy Board "has no authority to engage in the implementation of neighborhood action plans."

In response to a question about whether the neighborhood revitalization program terminates in 2009, Arlin Waelti opined as follows:

"No mention is made in [Laws 1990, chapter 604], the NRP Law or the NRP Ordinance that the activities of the NRP terminate in 2009. The procedural requirements of subdivision 6 of the NRP Law preclude the possibility that all revenue in the NRP Reserve could be expended in the year it was reserved. The portion of the \$392,000,000 remaining unexpended in the

NRP Reserve must continue to be reserved until it is expended through the process defined in subdivision 6 of the NRP Law."

See July 2, 1999 Waelti Opinion.

CONCLUSIONS

With this background in mind, I'll turn now to the questions at hand.

1. How and when does the current NRP Joint Powers Agreement terminate? Does this include the sunset of the current NRP Policy Board?

The Joint Powers Agreement is an agreement. Unless extend by unanimous consent of the parties, it terminates on January 1, 2012 according to the terms of the agreement. Termination of the agreement will have the effect of terminating the current joint powers board.

2. Based upon the fact that there are Phase 1 and Phase 2 NRP contracts and activities (including revolving loan funds) that will continue beyond the 20-year timeframe of the program, who has decision-making and governing authority around these funds going forward? Is it required that some incarnation of the Policy Board would need to be constituted to continue to govern these funds? Could this ongoing management/governance be delegated to the proposed Community Advisory Board?

Cessation of the current Policy Board does not eliminate the NRP Law requirements i) to have a policy board; ii) that is open to the statutorily mandated membership; and iii) to perform the statutorily mandated duties. Absent legislative changes, thus, the City would have to create a new policy board to replace the expired board in order to continue to operate the neighborhood revitalization program in compliance with the law.

The new policy board would not necessarily have to be a joint powers entity, but it would have to meet the statutory membership requirements. Since the proposed Community Advisory Board is not open to the entities designated in the NRP Law, it would not satisfy the statute.

As noted in the background section of this memorandum, the NRP Law requires the policy board to perform two main duties: it must review and approve action plans (and modifications to those plans) to recommend to the City and whatever other participating jurisdictions have implementation authority over the particular activities in the plans; and it must evaluate expenditures against adopted plans. The current Policy Board also provides general policy direction for the program, hires the director, promotes neighborhood participation and encourages interagency cooperation.

If it was determined that the new policy board required staff to assist with its duties, a non-joint powers entity would not have the operational powers necessary to hire staff. Future staffing, if any, would thus have to be provided by the City or through a cooperation agreement with another participating jurisdiction. I would note that the City contracted for the initial director of the program, so this would not be unprecedented.

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The Joint Powers Agreement does not include plans for distribution of equipment, assets and liabilities of the current Policy Board upon dissolution. Presumably the Policy Board's employment contract with the director and other contracts are set up to terminate on or are terminable before January 1, 2012. Assuming the City provided most if not all of the Policy Board's funds, it would be entitled to claim any assets of the Policy Board remaining after settlement of outstanding obligations. See Minn. Stat. §471.59, subd. 5 (2006).

The Bylaws require the participating jurisdictions to provide such defense and indemnification to the Policy Board, its members, director and employees as would be required under Minnesota Statutes, section 466.07. Section 466.07 covers damages levied or claimed against an officer or employee acting in the performance of duties of the position and not guilty of malfeasance in office, willful neglect of duty or bad faith. The Bylaws, however, do not allocate responsibility among the participating jurisdictions for such claims. They also do not address responsibility for non-tort claims.

NMN:dms